

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MARY TYLER ,

Plaintiff,

V.

TRI CITY ANIMAL SHELTER, ET AL.,

Defendants.

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No. 3:23-cv-2377-G-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Mary Tyler filed a *pro se* complaint concerning an animal shelter's seizing her dog. *See* Dkt. No. 3.

Senior United States District Judge A. Joe Fish referred the complaint to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference.

After reviewing the complaint, the undersigned questions whether there is subject matter jurisdiction and, given the circumstances of this case, enters these findings of fact, conclusions of law, and recommendation that the Court should dismiss this action for lack of subject matter jurisdiction.

These findings and conclusions provide Tyler notice as to the jurisdictional deficiencies. And the ability to file objections to the undersigned's recommendation that this case be dismissed for lack of jurisdiction (further explained below) offers Tyler an opportunity to establish (if possible) that the Court does indeed have subject matter jurisdiction.

### Legal Standards

“Jurisdiction is the power to say what the law is.” *United States v. Willis*, 76 F.4th 467, 479 (5th Cir. 2023).

And “[f]ederal courts are courts of limited jurisdiction,’ possessing ‘only that power authorized by Constitution and statute.” *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)); *see also Bowles v. Russell*, 551 U.S. 205, 212 (2007) (“Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider.”); *Stockman v. Fed. Election Comm’n*, 138 F.3d 144, 151 (5th Cir. 1998) (“Federal courts are courts of limited jurisdiction, and absent jurisdiction conferred by statute, lack the power to adjudicate claims.”).

Federal courts must therefore “presume that a suit lies outside this limited jurisdiction, and the burden of establishing federal jurisdiction rests on the party seeking the federal forum.” *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). Correspondingly, all federal courts have an independent duty to examine their own subject matter jurisdiction. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583-84 (1999) (“Subject-matter limitations ... keep the federal courts within the bounds the Constitution and Congress have prescribed. Accordingly, subject-matter delineations must be policed by the courts on their own initiative even at the highest level.” (citations omitted)).

Tyler chose to file this lawsuit in federal court and, by doing so, undertook the burden to establish federal jurisdiction. *See Butler v. Dall. Area Rapid Transit*, 762

F. App'x 193, 194 (5th Cir. 2019) (per curiam) (“[A]ssertions [that] are conclusory [ ] are insufficient to support [an] attempt to establish subject-matter jurisdiction.” (citing *Evans v. Dillard Univ.*, 672 F. App'x 505, 505-06 (5th Cir. 2017) (per cuiam); *Jeanmarie v. United States*, 242 F.3d 600, 602 (5th Cir. 2001))).

And, if Tyler does not establish federal jurisdiction, this lawsuit must be dismissed. *See* FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

Thus, because federal jurisdiction is not assumed, “the basis upon which jurisdiction depends must be alleged affirmatively and distinctly and cannot be established argumentatively or by mere inference.” *Getty Oil Corp. v. Ins. Co. of N.A.*, 841 F.2d 1254, 1259 (5th Cir. 1988) (citing *Ill. Cent. Gulf R. Co. v. Pargas, Inc.*, 706 F.2d 633, 636 & n.2 (5th Cir. 1983)); *see also MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 313 (5th Cir. 2019) (“Because federal courts have limited jurisdiction, parties must make ‘clear, distinct, and precise affirmative jurisdictional allegations’ in their pleadings.” (quoting *Getty Oil*, 841 F.2d at 1259)).

Under their limited jurisdiction, federal courts generally may only hear a case if it involves a question of federal law or where diversity of citizenship exists between the parties. *See* 28 U.S.C. §§ 1331, 1332.

In cases invoking jurisdiction under Section 1332, each plaintiff's citizenship must be diverse from each defendant's citizenship, and the amount in controversy must exceed \$75,000. *See* 28 U.S.C. § 1332(a), (b).

This amount “is determined by the amount of damages or the value of the

property that is the subject of the action.” *Celestine v. TransWood, Inc.*, 467 F. App’x 317, 319 (5th Cir. 2012) (per curiam) (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977)).

And, “[f]or diversity purposes, state citizenship is synonymous with domicile. A change in domicile requires: ‘(1) physical presence at the new location and (2) an intention to remain there indefinitely.’” *Dos Santos v. Belmere Ltd. P’ship*, 516 F. App’x 401, 403 (5th Cir. 2013) (per curiam) (citations omitted); *see also Preston v. Tenet Healthsystem Mem’l Med. Ctr.*, 485 F.3d 793, 797-98 (5th Cir. 2007) (“In determining diversity jurisdiction, the state where someone establishes his domicile serves a dual function as his state of citizenship.... Domicile requires the demonstration of two factors: residence and the intention to remain.” (citing *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954))); *SXSW v. Fed. Ins. Co.*, 83 F.4th 405, 407 (5th Cir. 2023) (“‘The difference between *citizenship* and *residency* is a frequent source of confusion.’ For natural persons, § 1332 citizenship is determined by domicile, which requires residency plus an intent to make the place of residency one’s permanent home. An allegation of residency alone ‘does not satisfy the requirement of an allegation of citizenship.’” (emphasis in original; citations omitted)).

“The basis for diversity jurisdiction must be ‘distinctly and affirmatively alleged.’” *Dos Santos*, 516 F. App’x at 403 (quoting *Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 (5th Cir. 2009)). And “a ‘failure to adequately allege the basis for diversity jurisdiction mandates dismissal.’” *Id.* (quoting *Stafford v. Mobil Oil Corp.*, 945 F.2d 803, 805 (5th Cir. 1991)).

Under Section 1331, federal question jurisdiction “exists when ‘a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.’” *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 172 (5th Cir. 2009) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27-28 (1983)); *see also In re Hot-Hed Inc.*, 477 F.3d 320, 323 (5th Cir. 2007) (“A federal question exists ‘if there appears on the face of the complaint some substantial, disputed question of federal law.’” (quoting *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995))).

The “‘creation’ test ... accounts for the vast bulk of suits under federal law.” *Gunn*, 568 U.S. at 257 (citation omitted). But

“a federal court [is also] able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.” That is to say, “federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.”

*Perez v. Se. SNF, L.L.C.*, No. 21-50399, 2022 WL 987187, at \*3 (5th Cir. Mar. 31, 2022) (per curiam) (quoting *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 312 (2005), then *Gunn*, 568 U.S. at 258).

### Analysis

Insofar as Section 1332 may afford jurisdiction for any claims that Tyler asserts, the complaint fails to “distinctly and affirmatively allege[]” a basis for it, as Tyler fails to allege the citizenships of the parties and an amount in controversy.

*Mullins*, 564 F.3d at 397. More so, from the content of the complaint, the Court may reasonably infer that there is not complete diversity, thus preventing jurisdiction under Section 1332.

Tyler also has not established a basis for jurisdiction under Section 1331. The complaint does not specifically assert a claim under federal law. Nor do the facts alleged show that a state law claim in the context of this lawsuit is created by federal law or that a right to relief turns on a substantial question of federal law.

And, to the extent that Tyler alleges that she “lost [at a] Cedar Hill TX municipal hearing and then [lost in a] Dallas County Court of Law 5” proceeding, Dkt. No. 3 at 1 (cleaned up), such that all state judicial proceedings concluded before – and no appeal was pending when – Tyler filed this lawsuit, this federal district court does not offer another chance to appeal from the state courts. That is, under the *Rooker-Feldman* doctrine, the Court lacks jurisdiction “to modify or reverse” a state court proceeding. *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 382 (5th Cir. 2013) (“Reduced to its essence, the *Rooker-Feldman* doctrine holds that inferior federal courts do not have the power to modify or reverse state court judgments’ except when authorized by Congress.” (quoting *Union Planters Bank Nat’l Ass’n v. Salih*, 369 F.3d 457, 462 (5th Cir. 2004))); accord *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994); see *Jordaan v. Hall*, 275 F. Supp. 2d 778, 789 (N.D. Tex. 2003) (noting that the doctrine prevents “thinly veiled attempt[s] to circumvent the state appellate process and to collaterally attack – in the guise of a federal civil rights action – the validity of a state court [judgment] and other related orders”); but see *Miller v. Dunn*,

35 F.4th 1007, 1012 (5th Cir. 2022) (“*Rooker-Feldman* is inapplicable where a state appeal is pending when the federal suit is filed.”).

### **Recommendation**

The Court should dismiss this case for lack of subject matter jurisdiction.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge’s findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: October 30, 2023

A handwritten signature in black ink, appearing to read 'D. Horan', with a long horizontal line extending to the right.

DAVID L. HORAN  
UNITED STATES MAGISTRATE JUDGE